CASE SUMMARY

Complaint against the Home Affairs Department for maladministration in assisting an owner to obtain the ownership records of an estate free of charge

The Complaint

The complainant accused the Home Affairs Department (HAD) of maladministration in assisting an owner to obtain the ownership records of an estate from the Land Registry for the purpose of forming an owners' corporation (OC), and of disparity in treatment in respect of any subsequent similar request made by other owners.

Sequence of events

2. The complainant was also one of the owners of the estate. In November 2002, he learned that HAD had assisted one owner in obtaining free of charge the ownership records from the Land Registry for the purpose of forming an OC, and that HAD did not require verification of documents to indicate that this owner had the requisite support from other owners for the OC formation. However, if any other owner subsequently raised a similar request, HAD would seek to verify the information submitted before rendering assistance.

3. HAD explained that according to its internal guidelines, it would issue a certificate to waive Land Registry search fees (the certificate) to the first owner who submitted an application to facilitate his obtaining the ownership records from Land Registry free of charge, provided that he secured 5% of the owners' shares in support. The owner had to sign an undertaking that the information would be used for OC formation only, that he would observe the Personal Data (Privacy) Ordinance, and that he would surrender the ownership records to HAD upon request. As the owner concerned complied with the guidelines, HAD issued to him the certificate so that he could obtain the records free of charge.

4. However, if any other owner subsequently also secured 5% of the owners' shares in support of OC formation and approached HAD, the Department would then ask him, as convenor, to give a public notice of meeting by publication in local newspapers before offering him assistance to get the ownership records from the first owner. HAD explained that it handled these two requests differently because they involved different issues, namely, the way the first owner effectively obtained the certificate from HAD, and how the second got the ownership records from the first owner through HAD.

Our observations and comments

5. The Building Management Ordinance ("BMO") provided for the formation of OCs. To this end, HAD published *Building Management*, a brochure on the management of buildings, and laid down internal guidelines on handling applications for the certificate. The following table summarises the relevant parts of the BMO, *Building Management* and HAD's internal guidelines:

BMO	*Building Management*	HAD's internal guidelines
Section 3(1) stipulates that: *A meeting of the owners to appoint a management committee may be convened by the owners of not less than 5% of the shares*	Chapter 2 states that: *According to BMO, the owners of not less than 5% of the shares will act as the "convenor" to convene a meeting of the owners*	HAD would issue the certificate to waive Land Registry fees to obtain the ownership records provided that: *(1) the applicant shows 5% of the owners' shares in support;* *(2) a date is given for the*

		owners' meeting; *(3) an undertaking is given to only use the information for OC formation and to observe the Personal Data (Privacy) Ordinance; and* *(4) the certificate is issued to the owners' group of a building/estate once only.*

6. To form an OC, an owners' meeting must first be convened to appoint a management committee. To convene an owners' meeting must involve owners holding not less than 5% of the shares acting as "convenor". This stipulation in the BMO differs from that in HAD's internal guidelines, as the latter requires only the "support" of owners of not less than 5% of the shares and does not require the applicant to meet the statutory requirements of convening an owners' meeting.

7. In this case, before issuing the certificate to the first owner, HAD had not checked whether there were owners of not less than 5% of the shares willing to act as "convenor". In fact, although the owner concerned had obtained the ownership records for free from the Land Registry with the help of HAD, he never obtained sufficient shares to convene an owners' meeting.

8. It was wrong for HAD to issue the certificate without verifying whether the first owner had obtained the sufficient number of shares as he had claimed, and whether his supporters were in fact owners of the estate. The

Department agreed to revise its internal guidelines to remind its staff to check all the information submitted by the applicants.

9. It was also improper and unfair for HAD to give different treatment to any other owner who subsequently applied for free use of the ownership records.

Conclusion and recommendations

10. The Ombudsman considered this complaint **substantiated.**

11. This Office proposed the following recommendations to HAD:

(i) to revise its internal guidelines on handling applications for the certificate to conform with the requirements of the BMO; and

(ii) to stipulate in the internal guidelines that staff must check and verify the information provided by the applicant when processing applications for the certificate.

Response from HAD

12. HAD accepted our comments. It explained that the internal guidelines were less rigid in order to facilitate the formation of OCs by enthusiastic owners. To save public money, it would only issue one certificate for each housing estate or building. Subsequent applicants wishing to form an OC would be asked to work with the first owner to share the ownership records already obtained.

Remarks

13. This Office agreed that HAD should do its best to assist those enthusiastic and responsible owners. Nevertheless, it should also ensure that a certificate issued would in fact be used to successfully convene an owners' meeting, thereby removing any need for the issue of another certificate

altogether.

14. The Ombudsman upheld her conclusion and recommendations and was pleased that HAD accepted them.

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